

2030 W. SPOFFORD  
SPOKANE, WA 99205  
INDIGENT DISABLED  
UNLAWFULLY INCARCERATED  
PRISONER & PLAINTIFF

MO-FJ-41  
DATE: 6/16/05  
TIME: 19:00

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

DAVID J. MUNEIL, III  
PLAINTIFF

CASE NO. 2:05-0498

UNITED STATES, AND ITS  
OFFICERS AND AGENCIES;  
CLERK U.S. DISTRICT  
COURT-SD-WV; CLERK-  
U.S. BANKRUPTCY COURT-  
SD-WV; U.S. ATTORNEY-  
SD-WV; OFFICE OF U.S.  
TRUSTEE-SD-WV; U.S.  
MARSHAL SERVICE-SD-  
WV; FBI-SD-WV; IRS-  
SD-WV; SECRET SERVICE-  
SD-WV; AND THEIR  
OFFICERS,

DEFENDANTS.

VERIFIED COMPLAINT FOR:

① TO COMPEL OFFICERS/

AGENCIES OF THE U.S. TO

PERFORM DUTIES PURSUANT TO  
28 U.S.C. § 1361;

② DECLARATORY JUDGMENT

PURSUANT TO 28 U.S.C. § 2201

③ FOR ENTRY OF JUDGMENTS

GRANTING FULL FAITH & CREDIT

PURSUANT TO U.S. CONST. ART IV

§ 1 AND 28 U.S.C. § 1738;

④ FOR RELIEF FROM VOID

JUDGMENTS AND ORDERS

PER 28 U.S.C. § 1655;

⑤ FOR ENFORCEMENT OF

JUDGMENTS AGAINST DEFENDANT

PURSUANT TO FRCP 71, 69(a) &

70;

⑥ CORRECTION OF AGENCY

RECORDS PURSUANT TO

5 U.S.C. § 552(9);

⑦ FOR INJUNCTION PER FRCP

65 AND FOR APPOINTMENT OF

A MASTER PER FRCP 53(b);

⑧ FOR DAMAGES, COSTS AND

ATTORNEY FEES.

JURY TRIAL DEMANDED

FILED

JUN 20 2005

TERESA L. DEPPNER, CLERK  
U.S. District & Bankruptcy Courts  
Southern District of West Virginia

## I. JURISDICTION & VENUE

101. THIS COURT HAS JURISDICTION OVER THIS ACTION PURSUANT TO 28 U.S.C. § 1301.

1.2 VENUE IS PROPER IN THIS COURT AS ONE OR MORE OF THE DEFENDANTS AS GOVERNMENT OFFICERS OR AGENCIES RESIDES IN OR HAS IT'S OFFICE OF OPERATION IN THIS DISTRICT, AND ONE OR MORE OF THE ACTS COMPLAINED OF OCCURRED IN THIS DISTRICT.

1.3. THAT PLAINTIFF IS AN "OFFICER OF THE UNITED STATES", AS DEFINED BY 42 U.S.C. § 1985(1), APPOINTED PURSUANT TO 11 U.S.C. § 1123(b)(3)(B), AS THE DISBURSING AGENT, LIQUIDATING TRUSTEE, AND GENERAL MANAGER OF REORGANIZED DEBTOR BROADWAY BUILDINGS II L.P., PURSUANT TO ORDERS OF THE U.S. BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, CASE NO. LA 98-18082, ENTERED 3/19/99 AND 6/16/99.

1.4 THAT PLAINTIFF IS A "QUALIFIED INDIVIDUAL" WITH AN

1 ESTABLISHED DISABILITY, ENTITLED  
2 TO REASONABLE ACCOMMODATIONS FROM  
3 THE DEFENDANTS, AND THIS COURT,  
4 AND THE EQUAL PROTECTION CLAUSE  
5 OF THE 14<sup>TH</sup> AMEND. OF THE U.S.  
6 CONST.

7 1.5 THAT PLAINTIFF IS A RESIDENT  
8 OF SPOKANE, WA, AND IS PRESENTLY  
9 UNLAWFULLY INCARCERATED IN  
10 SPOKANE COUNTY JAIL, IN VIOLATION OF  
11 HIS CIVIL & CONSTITUTIONAL RIGHTS,  
12 IN RETALIATION FOR HAVING ATTEMPTED  
13 TO EXERCISE HIS CONSTITUTIONALLY  
14 PROTECTED RIGHTS.

15 1.6 THAT THIS COURT FURTHER HAS  
16 JURISDICTION IN THIS MATTER PURSUANT TO  
17 28 U.S.C. § 2201, U.S. CONST. ART. IV § 1, 28  
18 U.S.C. § 1738, 28 U.S.C. § 1355, AND  
19 5 U.S.C. § 552a(g).  
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PETITIONER & RESPONDENTS "DUTIES"

II. PLAINTIFFS & DEFENDANTS "DUTIES"

2.1. THE PLAINTIFF IS THE  
LAWFUL OWNER, OWNER AND TRUSTEE,  
AS TO THE FOLLOWING "FOREIGN  
JUDGMENTS" REGISTERED IN THE  
FOLLOWING ACTIONS:

(a) UNITED STATES BANKRUPTCY COURT,  
EASTERN DISTRICT OF WASHINGTON, CASE  
NO. MC-02, FILED 3/21/02;

(b) UNITED STATES DISTRICT COURT,  
EASTERN DISTRICT OF WASHINGTON, CASE  
NO. 04-427, FILED 5/16/02;

(c) UNITED STATES BANKRUPTCY COURT,  
WESTERN DISTRICT OF WASHINGTON, CASE  
NO. ~~02-103~~ 02-103, FILED 10/17/02;

(d) UNITED STATES DISTRICT COURT FOR  
DISTRICT OF IDAHO, CASE NO. MC-05/14,  
FILED 12/27/00; AND

(e) SPOKANE COUNTY SUPERIOR COURT  
CASE NO. 02-2-02825-4, FILED  
5/1/02; WITH ALL OF THE FOREGOING  
BEING HERETOFORE <sup>COLLECTIVELY</sup> REFERRED TO  
AS "FOREIGN JUDGMENTS".

2.2. THAT THE PLAINTIFF AND THE  
DEFENDANTS EACH ACQUIRED CERTAIN  
DUTIES PURSUANT TO THE "FOREIGN JUDGMENTS"

2.3. THAT BASED UPON THE  
 "FOREIGN JUDGMENTS" ON 1/30/01  
 IN CASE NO. CG-97-435-BHW, A  
 "STIPULATED ORDER RE: LIABILITY AND DAMAGES" WAS  
 ENTERED (HEREIN AFTER "ATTACHED EXECUTION")

2.4. THAT THE ATTACHED <sup>MONEY</sup> JUDGMENT  
 IS HEREIN AFTER REFERRED TO AS  
 "ATTACHED EXECUTION".

2.5. THAT DEFENDANTS HAVE  
 A CONSTITUTIONAL DUTY, AS A MINISTERIAL  
 NON-DISCRETIONARY DUTY, TO GRANT  
 FULL FAITH & CREDIT TO THE "FOREIGN  
 JUDGMENTS" AND THE "ATTACHED  
 EXECUTION", PURSUANT TO U.S.  
 CONST. ART IV § 1.

2.6 THAT DEFENDANTS HAVE  
 A STATUTORY DUTY, AS A MINISTERIAL  
 NON-DISCRETIONARY DUTY, TO GRANT  
 FULL FAITH & CREDIT TO THE "FOREIGN  
 JUDGMENTS" AND THE "ATTACHED  
 EXECUTION", PURSUANT TO 28 U.S.C.  
 § 1738.

2.7 THAT THE DEFENDANTS HAVE  
 A STATUTORY DUTY, AS A MINISTERIAL  
 NON-DISCRETIONARY, TO ~~RECEIVE~~  
~~AND ENFORCE~~ ISSUE EXECUTION  
 AND ENFORCEMENT AS TO THE  
 "FOREIGN JUDGMENTS" AND THE

1 "ATTACHED EXECUTION" PURSUANT TO  
2 FBCP RULE 69.

3 2.8 THAT THE DEFENDANTS HAVE  
4 A STATUTORY DUTY, AS A MINISTERIAL  
5 NON-DISCRETIONARY DUTY, TO ENFORCE  
6 THE REIMPOSED AUTOMATIC STAY,  
7 ESTABLISHED BY THE "FOREIGN  
8 JUDGMENTS" AND THE "ATTACHED  
9 EXECUTION" PURSUANT TO 11 U.S.C. § 362

10 2.9 THAT THE DEFENDANTS  
11 HAVE A STATUTORY DUTY, AS A  
12 MINISTERIAL NON-DISCRETIONARY  
13 DUTY TO ENFORCE THE DISCHARGE  
14 AND DISCHARGE INJUNCTION  
15 ESTABLISHED BY THE "FOREIGN  
16 JUDGMENTS" AND THE "ATTACHED  
17 EXECUTION", PURSUANT TO 11  
18 U.S.C. § 524 AND 11 U.S.C. § 1141.

19 2.10 THAT THE DEFENDANTS  
20 HAVE OTHER CONSTITUTIONAL,  
21 STATUTORY, REGULATORY DUTIES,  
22 AS MINISTERIAL NON-DISCRETIONARY  
23 DUTIES AS TO THE ENFORCEMENT  
24 AND EXECUTION OF THE "FOREIGN  
25 JUDGMENTS" AND THE "ATTACHED  
26 EXECUTION", AS PROVIDED BY LAW.

27 2.11 THAT THE DEFENDANTS  
28 HAVE BREACHED THEIR DUTIES AND

29

30 6 OF 22

31 ~~PL~~

1 OBLIGATION AS TO THE "FOREIGN  
2 JUDGMENTS" AND THE "ATTACHED  
3 EXECUTION".

4 2.012 THAT PURSUANT TO  
5 WAC 446-20-050(1)(b), RCW 10.97,  
6 WAC 446-20, AND 5 U.S.C. § 5529,  
7 THE DEFENDANTS HAVE A  
8 STATUTORY DUTY TO ~~TO~~ CREATE,  
9 MAINTAIN, CORRECT AND DISSEMINATE  
10 ACCURATE RECORDS AS TO THE  
11 PLAINTIFF, THE "FOREIGN JUDGMENTS"  
12 AND THE "ATTACHED EXECUTION".

13 2.013 THAT THE DEFENDANTS  
14 HAVE BREACHED THEIR DUTY TO  
15 CREATE, MAINTAIN, CORRECT AND  
16 DISSEMINATE ACCURATE RECORDS,  
17 AS TO THE PLAINTIFF, THE  
18 "FOREIGN JUDGMENTS" AND THE  
19 "ATTACHED EXECUTION", IN  
20 VIOLATION OF RCW 10.97, WAC  
21 446-20 AND 5 U.S.C. § 5529.

22 2.014 ~~TO~~ THAT THE DEFENDANTS  
23 HAVE FAILED TO MAKE DISCLOSURES  
24 TO THE PLAINTIFF AS MANDATED BY  
25 THE FOIA, ② GRANT THE PLAINTIFF  
26 ACCESS TO THE COURTS, OR AGENCY  
27 ADJUDICATIVE PROCEDURES; ③ GRANT  
28



1 THE PLAINTIFF REASONABLE  
 2 ACCOMMODATIONS, FOR AN ESTABLISHED  
 3 DISABILITY; ④ GRANT PLAINTIFF  
 4 FREEDOM FROM UNLAWFUL SEARCH,  
 5 AND SEIZURES OF PROPERTY &  
 6 PLAINTIFF; ⑤ CEASE AND DESIST  
 7 FROM UNLAWFULLY INTERFERING  
 8 WITH PLAINTIFF'S LIBERTY; AND ⑥  
 9 PROTECT THE PLAINTIFF FROM VIOLATIONS  
 10 OF HIS OTHER CIVIL & CONSTITUTIONAL  
 11 RIGHTS.

12 2.15 THE DEFENDANTS HAVE  
 13 FAILED AND REFUSED TO PAY TO  
 14 PLAINTIFF THE LIQUIDATED  
 15 DAMAGES OR LIQUIDATED COMPENSATION  
 16 AS ESTABLISHED BY THE "FOREIGN  
 17 JUDGMENTS" AND THE "ATTACHED  
 18 EXECUTION".

19 2.16 THE DEFENDANTS HAVE  
 20 FAILED AND REFUSED TO SURRENDER  
 21 OR TURN OVER REAL AND PERSONAL  
 22 PROPERTY VESTED IN PLAINTIFF, BY THE  
 23 "FOREIGN JUDGMENTS" AND THE  
 24 "ATTACHED EXECUTION".  
 25  
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 28



### III CLAIMS

3.1 THE "DUTIES" THAT THE DEFENDANT HAVE TO THE PLAINTIFF ARE CLEAR AND INDISPUTABLE.

3.2 THE DEFENDANT'S VIOLATIONS OF THEIR "DUTIES" TO THE PLAINTIFF CONSTITUTE CLEAR CONSTITUTIONAL OR STATUTORY VIOLATIONS.

3.3. THE DEFENDANTS OWE TO THE PLAINTIFF PERFORMANCE OF THEIR "DUTIES" WHICH ARE CLEAR, MINISTERIAL AND NON-DISCRETIONARY "DUTIES".

3.4. THE DEFENDANT'S "DUTIES" TO PLAINTIFF ARE SPECIFIC, PLAIN, SIMPLE, MINISTERIAL ACTS, DEVOID OF THE EXERCISE OF DISCRETION OR JUDGMENT, WITH PERFORMANCE SO POSITIVELY COMMANDED AND PLAINLY PRESCRIBED THAT THE DEFENDANT'S "DUTIES" AND OBLIGATIONS ARE FREE FROM DOUBT.

3.5. THE DEFENDANT'S "DUTIES" TO THE PLAINTIFF ARE STRICTLY REQUIRED BY THE CONSTITUTION, STATUTE OR COURT RULE.

3.6 THE DEFENDANT'S "DUTIES" THAT THE PLAINTIFF SEEKS TO COMPEL ARE THE PERFORMANCE OF MINISTERIAL "DUTIES" COMPLYING WITH THEIR OWN AGENCY'S RULES & REGULATIONS.

3.7. THE DEFENDANTS' FAILURE TO FULFILL THEIR "DUTIES" TO THE PLAINTIFF PLACES THE DEFENDANTS IN CLEAR VIOLATION OF AND A FAILURE TO COMPLY WITH THEIR OWN RULES, REGULATIONS AND PROCEDURES GOVERNING THEIR CONDUCT.

3.8. THE PLAINTIFF SEEKS THE PERFORMANCE OF CONSTITUTIONAL "DUTIES" OWED TO PLAINTIFF BY DEFENDANTS.

3.9. THE DEFENDANTS HAVE FAILED TO COMPLY WITH SPECIFIC CONSTITUTIONAL, STATUTORY OR REGULATORY DIRECTION, VIOLATING A CONSTITUTIONAL MANDATE.

3.10. THE DEFENDANTS HAVE ACTED IN EXCESS OF THEIR AUTHORITY AGAINST PLAINTIFF OR THEIR AUTHORITY HAS BEEN EXERCIZED IN AN UNCONSTITUTIONAL MANNER.

3.11. THE DEFENDANTS HAVE ACTED BEYOND THE SCOPE OF STATUTORY OR CONSTITUTIONAL AUTHORITY IN HARMING PLAINTIFF.

3.12. THE DEFENDANTS IN ACTING AGAINST THE PLAINTIFF HAVE VIOLATED AN EXPRESSED MANDATE BY STATUTE OR LAW, THEREBY ACTING OUTSIDE THE ZONE OF PERMISSIBLE DISCRETION,

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1 IN A "CLEAR ABSENCE OF ALL  
2 JURISDICTION".

3 3.13. THE DEFENDANTS HAVE  
4 OTHERWISE ABUSED THEIR DISCRETION  
5 AND ACTED CONTRARY TO LAW.

6 3.14. THE DEFENDANTS HAVE  
7 FAILED AND REFUSED TO MEET  
8 CERTAIN STATUTORY & REGULATORY  
9 OBLIGATIONS TO COMBAT DISCRIMINATION  
10 AND RETALIATION AGAINST THE  
11 PLAINTIFF.

12 3.15. THE DEFENDANT'S OFFICIAL  
13 PRIOR ACTS AND ACTIONS AGAINST  
14 THE PLAINTIFF, CONSTITUTE AN  
15 UNLAWFUL EXERCISE OF THEIR  
16 POWERS AND ARE THEREFORE  
17 CONSTITUTIONALLY VOID.

18 3.16. THE ACTS AND "DUTIES"  
19 SOUGHT TO BE COMPELLED BY  
20 THE DEFENDANTS ARE "MINISTERIAL  
21 ACTS" WHICH THE LAW PRESCRIBES  
22 AND DEFINES AS MANDATORY "DUTIES"  
23 TO BE PERFORMED WITH SUCH  
24 PRECISION AS TO LEAVE NOTHING  
25 TO THE EXERCISE OF DISCRETION.

26 3.17. THE DEFENDANT'S  
27 PRIOR CONDUCT EXTENDS BEYOND  
28 ANY RATIONAL EXERCISE OF

1 ALLOWABLE DISCRETION, THAT  
 2 ~~EXCEPT~~ THEY ARE "VOID" AND  
 3 UNLAWFUL EVEN IF FOUND TO BE  
 4 WITHIN THE "LETTER" OF THE AUTHORITY  
 5 GRANTED TO THE DEFENDANTS.

6 3.18 THE PLAINTIFF HAS  
 7 PREVIOUSLY FULLY EXHAUSTED BOTH  
 8 ADMINISTRATIVE AND JUDICIAL  
 9 REMEDIES AGAINST DEFENDANTS  
 10 AND IS LEFT WITH NO ALTERNATIVE  
 11 ADEQUATE REMEDY AT LAW, THAN  
 12 THIS ACTION FOR MANDAMUS.

13 3.19. THE PLAINTIFF HAS A  
 14 CLEAR AND UNDISPUTED RIGHT TO  
 15 THE RELIEF SOUGHT, AND THE  
 16 DEFENDANTS HAVE A CLEAR  
 17 CONSTITUTIONAL, STATUTORY OR  
 18 REGULATORY DUTY TO PERFORM  
 19 THE ACTS ~~AND~~ AND "DUTIES"  
 20 DEMANDIED.

21 3.20. THE PLAINTIFF, IN  
 22 SEEKING TO PREVIOUSLY COMPEL THE  
 23 DEFENDANTS ~~HAS BEEN~~ TO  
 24 PERFORM THEIR DUTIES HAS BEEN  
 25 ~~BE~~ UNLAWFULLY SUBJECTED TO:

26 (a) A DENIAL OF ACCESS TO THE  
 27 COURTS, LAW LIBRARY AND LEGAL  
 28 RESOURCES;

1 (b) DENIAL OF DUE PROCESS  
2 NOTICE AND MEANINGFUL OPPORTUNITY  
3 TO BE HEARD;

4 (c) A CONSPIRACY BY DEFENDANTS  
5 TO CONCEAL OR COVER UP THE  
6 PLAINTIFFS UNLAWFUL, ARRESTS,  
7 DETENTIONS, INCARCERATION OR  
8 PROSECUTIONS, AND INVALID CRIMINAL  
9 CONVICTIONS, ALL IN RETALIATION  
10 BY THE DEFENDANTS, <sup>IN RESPONSE TO THE</sup> ~~FOR THE~~  
11 PLAINTIFFS EXERCISE OF ITS  
12 CONSTITUTIONAL RIGHTS;

13 (d) KNOWING AND INTENTIONAL  
14 DISCRIMINATION AND RETALIATION  
15 AGAINST PLAINTIFF BY DEFENDANTS;

16 (e) A FALSIFICATION OF THE  
17 PLAINTIFFS CRIMINAL HISTORY AND  
18 FALSIFICATION OF AGENCY RECORDS,  
19 AS TO PLAINTIFF, RESULTING IN  
20 MULTIPLE ADVERSE AGENCY OR  
21 JUDICIAL DETERMINATIONS AGAINST  
22 PLAINTIFF;

23 (f) MULTIPLE CONSPIRACIES AND  
24 ONGOING UNLAWFUL <sup>SEARCHES &</sup> SEIZURES OF  
25 PROPERTY, PERSON, ALONG WITH  
26 VIOLATIONS OF CIVIL AND CONSTITUTIONAL  
27 RIGHTS OF PLAINTIFF.  
28

3.21 THE EQUITABLE AND  
 PROCEDURAL STATUS AND POSTURE  
 OF THIS CASE DEMONSTRATES THE  
 NEED FOR PROMPT MANDAMUS, AS  
 TO THESE ISSUES OF GREAT  
 PUBLIC IMPORTANCE.

3.22 THAT THE PLAINTIFF IS  
 CURRENTLY SUFFERING A "CONTINUING  
 VIOLATION" OF HIS CONSTITUTIONAL RIGHTS  
 BY THE DEFENDANTS, CONSTITUTING  
 "IRREPARABLE INJURY", ~~FOR~~ WARRANTING  
 IMMEDIATE INJUNCTIVE AND MANDAMUS  
 RELIEF. (SEE WALTERS V. THOMPSON, 615  
 F. SUPP 330, 434 (1985), CITING TO WRIGHT  
 & MILLER, FED. PRACTICE & PROCEDURE  
 § 2948 AT 440, AND ELROD V. BURNS, 427  
 U.S. 347, AT 373 (1976).



## IV. PRAYER

4.1 THE PLAINTIFF PRAYS FOR A DECLARATORY JUDGMENT DECLARING THE DEFENDANTS DUTIES AND OBLIGATIONS AS TO THE "FOREIGN JUDGMENTS" AND THE "ATTACHED EXECUTION".<sup>①</sup>

4.2 THE PLAINTIFF PRAYS FOR A WRIT OF MANDAMUS <sup>AND INJUNCTION</sup> COMPELLING THE DEFENDANTS TO PERFORM THEIR DUTIES AND OBLIGATIONS IMPOSED BY THE "FOREIGN JUDGMENTS" AND THE "ATTACHED EXECUTION".<sup>①</sup>

4.3 THE PLAINTIFF PRAYS FOR A WRIT OF PROHIBITION <sup>AND INJUNCTION</sup>, PROHIBITING THE DEFENDANTS FROM ENGAGING IN ACTS CONTRARY TO OR IN VIOLATION OF THE "FOREIGN JUDGMENTS" AND THE "ATTACHED EXECUTION".<sup>①</sup>

4.4 THE PLAINTIFF PRAYS FOR THE ISSUANCE OF EXECUTION AND ENFORCEMENT, UPON THE EX PARTE DEMAND OF THE PLAINTIFF, BY THE DEFENDANTS.

4.5 THE PLAINTIFF PRAYS FOR AN ORDER COMMANDING THE DEFENDANTS TO PAY ~~THE~~ TO, COLLECT OR TURN OVER TO THE

① IN ACCORDANCE WITH THE CORRECTIONS, MODIFICATIONS, PURSUANT TO THE EXPLANATIONS OF ALL AGENCY RECORDS RELAYED TO THE PLAINTIFF, THE "FOREIGN JUDGMENTS", AND THE "ATTACHED EXECUTION" PURSUANT TO 5 U.S.C. § 552a, RECEIVED 10/17 AND 10/20/04 446-20



PLAINTIFF THE LIQUIDATED  
DAMAGES, COMPENSATION, REAL  
& PERSONAL PROPERTY AS  
ESTABLISHED BY THE "FOREIGN  
JUDGMENTS" AND THE "ATTACHED  
EXECUTION".

4.6 PLAINTIFF PAYS FOR  
COSTS OF SUIT, ATTORNEY FEES,  
ACTUAL DAMAGES, PUNITIVE DAMAGES,  
PURSUANT TO 11 U.S.C. § 362(h), <sup>①</sup>  
AND OTHER PROVISIONS OF LAW.

DATED: 6/16/05

JAVU  
INDIGENT DISABLED  
UNLAWFULLY INCARCERATED  
PRISONER & PLAINTIFF

### VERIFICATION OF COMPLAINT

I, DUNCAN T. MCNEIL, III, HEREBY  
DECLARE THAT ALL STATEMENTS,  
AVERMENTS OR CLAIMS MADE  
IN THE HEREIN COMPLAINT ARE  
MADE IN GOOD FAITH, AND ARE TRUE  
AND CORRECT UNDER THE  
PENALTY OF PERJURY, PURSUANT  
TO THE LAWS OF THE UNITED  
STATES.

DATED: 6/16/05

JAVU

AJ 451 (Rev. 11/91) Certification of Judgment

# United States District Court

Eastern

Washington

DISTRICT OF

## CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

Duncan J. McNeill

V.

Case Number: CS-97-435-RHW

David Baker, et al

I, James R. Larsen, Clerk of the United States district court  
certify that the attached judgment is a true and correct copy of the original judgment entered in this action on  
MAR 15 2002, as it appears in the records of this court; and that  
Date

\*no notice of appeal from this judgment has been filed, and no motion of any kind  
listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court.

MAR 15 2002

Date

James R. Larsen

Clerk

(By) Deputy Clerk

\*Insert the appropriate language: ... "no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the  
Federal Rules of Appellate Procedure has been filed." ... "no notice of appeal from this judgment has been filed, and any motions of the kinds listed  
in Rule 4(a) of the Federal Rules of Appellate Procedure (f) have been disposed of, the latest order disposing of such a motion having been entered  
on [date]." ... "an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date]." ...  
"an appeal was taken from this judgment and the appeal was dismissed by order entered on [date]."

(f)Note: The motions listed in Rule 4(a), Fed. R. App. P., are motions: for judgment notwithstanding the verdict; to amend or make additional findings  
of fact; to alter or amend the judgment; for a new trial; and for an extension of time for filing a notice of appeal.)

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1 Carlos Valero, WSBA#29192  
2 Law Offices of Carlos Valero  
3 715 E. Sprague Ave, Suite 204  
4 Spokane, WA 99202-2142  
5 Telephone 509-462-0000  
6 Facsimile 509-462-0007  
7 Attorney for Counter-Claimants

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAN 30 2001

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON

10 DUNCAN J. McNEIL,

11 Plaintiff,

12 v.

13 DAVID BAKER, et. al.,

14 Defendants.

15 CITIZENS AGAINST BANKRUPTCY &  
16 REAL ESTATE FRAUD L.P.; et. al. ,

17 Employers and Counter-Claimants,  
18 vs.

19 JOHN T. POWERS, et. al.,

20 Counter-Defendants.

Case No. CS-97-435-RHW

STIPULATED ORDER RE:  
LIABILITY AND DAMAGES

Hearing Date: September 27, 2000  
Hearing Time: 1:00 p.m.

Attest A True Copy  
James R. Larsen Clerk  
United States District Court  
Eastern District of Washington

By [Signature]  
Deputy Clerk

21 Plaintiff Duncan J. McNeil ("Plaintiff") and Counter Claimants CITIZENS  
22 AGAINST BANKRUPTCY & REAL ESTATE FRAUD LIMITED  
23 PARTNERSHIP ("CITIZENS AGAINST"); BROADWAY BUILDINGS II L.P.  
24 ("BROADWAY"); CAPITAL FINANCE L.P. ("CAPITAL"); and EMERALD  
SERVICES GROUP ("EMERALD"), (hereinafter collectively referred to as

RECEIVED

SEP 26 2000

CLERK, U.S. DISTRICT COURT  
SPOKANE, WASHINGTON

"Counter-Claimants") hereby stipulate to the entry of a "Stipulated Order Re:  
Liability and Damages" in support of a "Stipulated Final Judgment on Less Than  
All Claims; No Just Reason for Delay of Entry of Final Judgment on Less Than All

1 Claims", entered concurrently herewith:

2 **STIPULATED FACTS**

3 Plaintiff and Counter-Claimants hereby stipulate to the following facts:

4 1. Counter-Claimants and Plaintiff hereby admit as true the factual  
5 allegations contained in paragraphs 1 to 148 of the Plaintiff's First Amended  
6 Complaint, filed in this action on July 30, 1999 as Ct. Rec #115.

7 2. That at all times since May of 1996, Plaintiff was employed by Counter-  
8 Claimants and is owed agreed compensation for the services performed by Plaintiff,  
9 in the total amount of \$309,610.00, see discussion *infra*. That since June of 1996,  
10 Plaintiff has performed valuable services for Counter-Claimants related to the  
11 preservation and implementation of the JV/Loan Agreement and the confirmation  
12 and implementation of Broadway's Confirmed Plan of Reorganization. That  
13 Plaintiff has no ownership interests in Counter-Claimants and is not an officer,  
14 director, stockholder or equity holder of Counter-Claimants. Plaintiff is and at all  
15 times was, a retained independent consultant, performing valuable services for  
16 Counter-Claimants, at the request and instruction of Counter-Claimants, for the  
17 benefit of Counter-Claimants.

18 3. Were it not for Plaintiff's services, completed at the request and instruction  
19 of the Counter-Claimants, Counter-Claimants would not have been able to preserve  
20 and protect their interests in the JV/Loan Agreement and would not have been able  
21 to obtain the confirmation and implementation of Broadway's Confirmed Plan of  
22 Reorganization.

23 4. In May of 1996 and since that date, Counter-Claimants, through corporate  
24 resolutions, court orders and other authorizations and instruction, have employed  
25 Plaintiff and instructed Plaintiff to take all necessary action to: (1) investigate,  
26 preserve and protect Counter-Claimant's claims against third parties; (2) preserve,  
27 protect and implement Counter-Claimant's interests in the JV/Loan Agreement; (3)  
28 obtain the confirmation and implementation of Broadway's Confirmed Plan of

Stipulated Order Re: Liability and Damages - Page 2

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1 Reorganization; (4) formulate and implement a plan of reorganization for GMFT  
 2 Reorganization Corporation; (5) cause the unauthorized and forged deed wrongfully  
 3 encumbering the BROADWAY PROPERTY to be stricken and expunged; (6) cause  
 4 the unlawful Lis Pendens wrongfully encumbering the ANTLER PROPERTY to be  
 5 stricken and expunged; and (7) to take any and all other action necessary to preserve  
 6 and protect the Counter-Claimants business interests from the wrongful and  
 7 unlawful conduct of Third Parties. (See paragraphs 1 to 148 as alleged in Plaintiff's  
 8 First Amended Complaint.)

9 5. Were it not for the wrongful actions of Third Parties, Plaintiff would not  
 10 have had to perform the services described in paragraph #4, above. Were it not for  
 11 the wrongful actions of Third Parties, Counter-Claimants would not have incurred  
 12 the herein obligation owed to Plaintiff. Were it not for the wrongful actions of  
 13 Third Parties, Counter-Claimants would owe the Plaintiff no amount of unpaid  
 14 compensation.

15 6. That pursuant to the course of conduct, written partnership agreements,  
 16 written employment agreements, and Broadway's Confirmed Plan of  
 17 Reorganization, Plaintiff is entitled to recover reasonable compensation from  
 18 Counter-Claimants, in the sum of at least \$30/hr., plus expenses, for all services  
 19 which were requested and performed since June of 1996, as established herein.

20 7. Due to the wrongful actions of Third Parties, Counter-Claimants have been  
 21 unable to pay to Plaintiff reasonable compensation, for the valuable services that  
 22 Plaintiff has performed since June of 1996. Were is not for the wrongful actions of  
 23 Third Parties, the Counter-Claimants and related parties, Plaintiff would not have  
 24 been required to performed the services for Counter-Claimants, as described in  
 25 paragraph 4.

26 8. Having completed satisfactory discovery and in order to avoid further  
 27 litigation expense and costs, Plaintiff and Counter-Claimants hereby stipulate that  
 28 Counter-Claimants are, jointly and severally indebted to Plaintiff as follows:

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- a. For the time period of June of 1996 to March of 1999, Plaintiff has claimed reasonable compensation in the amount of \$129,021.00. To avoid further litigation, Plaintiff and Counter Claimants hereby stipulate to Plaintiff being entitled to reasonable compensation in the sum of \$120,000, for this time period, plus pre-judgment interest of 12% per annum, from November 1, 1997 on this amount, for a total sum of \$162,600.00, for this period, due as of October 1, 2000;
  - b. For the time period of March 1999 to March 2000, Plaintiff has claimed reasonable compensation in the amount of \$94,114.00. To avoid further litigation, Plaintiff and Counter Claimants hereby stipulate to Plaintiff being entitled to reasonable compensation in the sum of \$90,000, for this time period, plus pre-judgment interest of 12% per annum, from September 1, 1999 on this amount, for a total sum of \$101,880.00, for this period, due as of October 1, 2000;
  - c. For the time period of March 2000 to October 1, 2000, Plaintiff has claimed reasonable compensation in the amount of \$55,029.00. To avoid further litigation, Plaintiff and Counter Claimants hereby stipulate to Plaintiff being entitled to reasonable compensation in the sum of \$52,000, for this time period, plus pre-judgment interest of 12% per annum, from May 1, 2000 on this amount, for a total sum of \$54,652.00, for this period, due as of October 1, 2000;
  - d. That Plaintiff is entitled to reasonable compensation for services to be performed after October 1, 2000, in the sum of \$6,450.00 per month, plus actual expenses, and interest at the rate of 12% per annum, until the successful implementation of the JV/Loan Agreement and the implementation of Broadway's Confirmed Plan of Reorganization. Said amount to be set by subsequent stipulated order of this court.
9. Based upon the foregoing, Plaintiff and Counter-Claimants stipulate that

Counter-Claimants are jointly and severally obligated and liable to Plaintiff in the sum of \$319,132.00, for valuable services rendered from the time period of June of 1996 to October 1, 2000. Plaintiff and Counter-Claimants stipulate that said sum shall accrue post-judgment interest at the rate of 12% per annum, until paid in full.


10. That Plaintiff and Counter-Claimants stipulate that Plaintiff is the prevailing party in this action, as to Counter-Claimants and that Plaintiff is entitled to an award of his attorney fees and costs in bringing this action. Said amount to be set by subsequent order of this court.

### **ORDER OF THE COURT**

**IT IS HEREBY ORDERED** that the foregoing "Stipulated Order Re: Liability and Damages" in support of a "Stipulated Final Judgment on Less Than All Claims; No Just Reason for Delay of Entry of Final Judgment on Less Than All Claims", is entered in favor of Plaintiff and against Counter-Claimants, jointly and severally.

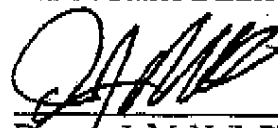
**IT IS FURTHER ORDERED**, that the District Court Executive is directed to enter this "Stipulated Order Re: Liability and Damages" and to provide copies to counsel and Plaintiff.

Dated: 10/30/00

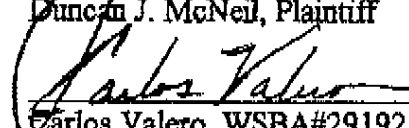
  
ROBERT H. WHALEY  
United States District Judge

**So Stipulated:**

Dated: September 26, 2000

  
Duncan J. McNeil, Plaintiff

Dated: September 26, 2000

  
Carlos Valero, WSBA#29192  
Law Offices of Carlos Valero  
Attorney for Counter-Claimants

Entered in Civil Docket on 11/30/01

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